IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 4415 OF 2007

Shivanand M. Murdande.... Petitioner

versus

Ichalkaranji Urban Coop Bank Ltd..... Respondent.

Shri p.,S.Dani for the petitioner
Shri Amit Borkar for Respondent no.1 and 2.
Shri S.K.Chinchalikar AGP for Respondent no.3.

CORAM; A.P. DESHPANDE, J.
DATED; 26TH JUNE, 2007

P.C.;

1. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of parties.

2. The respondent no.1 herein is a co-operative society, which is a bank. The Managing Committee of the society is elected for a term of five years. The petitioner was elected as a member of the managing committee for a period of five years i.e. from 2003 to 2008.

3. The bye-laws of the society provide that if a member of the managing committee is a guarantor for a borrower and if a borrower defaults in making the payment, the guarantor would incure disqualification.

According to the respondent no.1 the petitioner incurred disqualification as the borrowers for whom the petitioner was a guarantor had defaulted in repayment of the loan amount. Thus the petitioner is said to have incurred disqualification. The other ground on which the petitioner is said to have incurred disqualification is about the petitioner remained absent for three consecutive meetings. The respondent no.2 after issuing a show cause notice under section 78 of the Co-operative Societies Act and after granting an opportunity of hearing, to the petitioner, has passed an order, removing the petitioner from the post of Director of the Bank. Aggrieved by the said order passed by the respondent no.2, the petitioner had filed appeal before the State Government under section 152 of the Co-operative Societies Act. The State Government has dismissed the appeal and aggrieved thereby the present writ petition has been filed.

4. The main grievance of the petitioner in this petition is that the impugned order has been passed in breach of principles of natural justice in as much as the petitioner has been denied a reasonable opportunity of being heard in the matter. It is pointed out that the appeal was fixed for hearing on 20-4-2007 and that the petitioner received the notice

which was despatched on 18-4-2007, on 23-4-2007. It is not in dispute that the notice was despatched on 18-4-2007 when the appeal was fixed for hearing at Bombay on 20-4-2007. The present petitioner is a resident of Kolhapur and it is obvious that if notice has been sent on 18th, the petitioner could not have received it well in time to enable him to participate in the proceedings at Bombay in appeal. The petitioner has also raised another contention touching the merit of the matter by submitting that there was no effective consultation with the federal society. However, as I am setting aside the order passed by the Minister concerned as being in violation of the principles of natural justice, I do not wish to deal with the other submission which is touching the merit of the matter. The petitioner has succeeded in establishing that the petitioner was denied reasonable opportunity of hearing in the appeal, in as much as the petitioner could not remain present before the concerned Minister on 20th, as he received the notice on 23rd. Solely on this count the writ petition deserves to be allowed.

5. The learned AGP appearing for the respondent no.3 State of Maharashtra, on instructions obtained by him from the concerned Minister of Co-operation state that if the matter is fixed for hearing on 31st July the

Minister would be taking up the appeal for hearing and would pass order after affording an opportunity of hearing to the parties. The petitioner as also the respondent no.1 assured this court that they will not seek any adjournment before the appellate forum and would co-operate in early disposal of the appeal. The learned counsel representing the petitioner and the respondent no.1 undertake that they would remain present before respondent no.3 on 31st July and no further notices be sent to the petitioner and the respondent no.1. Hence fresh notices from respondent no.3 stands dispensed with. The undertaking from petitioner and the respondent no.1 that they will remain present before the respondent no.3 on 31st July 2007, is accepted.

6. In the result the writ petition is partly allowed. The impugned order passed by the respondent no.3 dated 5-5-2007 is quashed and set aside. The matter is remanded back to the respondent no.3 for a denovo enquiry and decision on merit. The writ petition is disposed of. Rule made absolute in the above terms with no order as to costs.

7. Parties to act on an authenticated copy of this order.

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